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## BC Farm Industry Review Board

October 13, 2022

File: P2215

### DELIVERED BY EMAIL

Cheyenne Williams & Barry Nisbet  
[REDACTED]

Marcie Moriarty  
Chief Prevention and Enforcement Officer  
BC SPCA  
1245 East 7th Avenue  
Vancouver BC V5T 1R1

### RE: WILLIAMS & NISBET NOTICE OF APPEAL OF A DECISION OF THE BRITISH COLUMBIA SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS (BCSPCA) DATED OCTOBER 7, 2022

Section 20.3 of the *Prevention of Cruelty to Animals Act (PCAA)*, provides that a person who owns an animal from whom custody of that animal was taken under section 10.1 or 11, may appeal a review decision of the BCSPCA affirming the decision to take the animal into custody, to the BC Farm Industry Review Board (BCFIRB).

Section 20.3(2)(b) of the *PCAA* requires appeals from BCSPCA review decisions such as the above captioned October 7, 2022 review decision to be filed within four days of issuance of a decision. In the interest of timeliness in addressing animal welfare issues, there is no provision under the *PCAA* for BCFIRB to extend the time for filing appeals.

### Relevant Chronology

The BCSPCA issued its review decision to Ms. Williams and Mr. Nisbet at 4:08pm on October 7, 2022. In that decision, the BCSPCA advised Ms. Williams and Mr. Nisbet of their right to appeal to BCFIRB and noted that “the appeal is time sensitive” and due “within four calendar days from receipt of this decision, with a deadline of 4:30pm on the last day,” and provided telephone and email contact information for BCFIRB.

BCFIRB staff calculated four calendar days starting on October 8, 2022 and determined that the deadline for filing the appeal with BCFIRB was 4:30pm on Tuesday October 11, 2022.

At approximately 9:00am on October 11, 2022, BCFIRB staff returned a voice message from Mr. Nisbet that was left at 10:31am on Monday, October 10, 2022 (a statutory holiday). In that call, Mr. Nisbet stated he intended to appeal the October 7, 2022 BCSPCA decision, to which staff advised they would forward an email containing information on how to file a Notice of Appeal and pay the filing fee. Based on when the

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**Web:**

Email: [firb@gov.bc.ca](mailto:firb@gov.bc.ca)

Website: [www.gov.bc.ca/BCFarmIndustryReviewBoard](http://www.gov.bc.ca/BCFarmIndustryReviewBoard)

**Phone:**

Info: 250 356-8945

Fax: 250 356-5131

**Mail:**

PO Box 9129 Stn Prov Govt  
Victoria BC V8W 9B5

**Location:**

2975 Jutland Rd  
Victoria, BC V8T 5J9

review decision was received, staff confirmed on the call that Mr. Nisbet's Notice of Appeal was due no later 4:30pm on October 11, 2022, and that BCFIRB had no provision to extend the deadline. Staff also advised that the filing fee was due no later than 4:30pm October 13, 2022. Mr. Nisbet confirmed that he would ensure he filed his appeal that morning.

At 10:03am on October 11, 2022, BCFIRB staff sent the following email to Mr. Nisbet:

**From:** Champion, Erica AF:EX [REDACTED]  
**Sent:** October 11, 2022 10:03 AM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** How to File a PCAA Appeal

Hello Mr. Nisbet,

This is further to your inquiry and conversation with case management staff regarding filing an appeal. Please see the below information on filing an appeal and paying the filing fee.

Please see the link for [Further Information on Animal Custody Appeals](#).

\*Please note\* The notice of appeal and filing fee are time sensitive. We must receive your notice of appeal no later than today; **October 11, 2022, at 4:30 pm**. As discussed, you can respond to this email address with your notice of appeal. The \$100 filing fee must be received by BCFIRB **no later than 4:30pm Thursday, October 13, 2022**.

As outlined in the attached handout, there are **no provisions to extend the time** to file an appeal or pay the filing fee.

#### **Payment of Filing Fee**

To pay by **credit card**, please contact **FrontCounter BC** at **(250) 751-7220**. Upon completion of payment, the FrontCounter BC clerk will scan and email a copy of the receipt to [firb@gov.bc.ca](mailto:firb@gov.bc.ca).

To pay by cheque, please ensure the \$100 filing fee is made payable to the 'Minister of Finance'. Note that if you are couriering the fee, there is a separate address. Because the timelines are tight, please provide BCFIRB with a tracking number.

**Mailing Address:**  
PO Box 9129 Stn Prov Govt  
Victoria, BC V8W 9B5

**Address for Courier:**  
1st Floor, 2975 Jutland Rd  
Victoria, BC V8T 5J9

You can also find here [Past BCFIRB Decisions with regards to Animal Custody Appeals](#).

If you have any further questions, please don't hesitate to contact us.

Kind Regards,

*Erica Champion (she/her) | Assistant Case Manager*  
[BC Farm Industry Review Board \(BCFIRB\)](#)

[REDACTED]

At approximately 1:30pm on October 11, 2022, Mr. Nisbet called BCFIRB staff to advise he was having difficulty editing the pdf version of the Notice of Appeal form and inquired

as to whether or not he was able to send an email advising of his appeal. Staff confirmed an email advising of his intention to file an appeal was sufficient and reiterated again the importance of receiving his appeal before 4:30pm that day. Mr. Nisbet stated he would be sending an email shortly.

At 4:27pm on October 11, 2022, staff noticed that no email had been received from Mr. Nisbet. Staff followed up by phone call to advise that BCFIRB had not yet received an email from him and wanted to confirm if an email had been sent. Mr. Nisbet stated that he was sending it at that point and again staff advised that his appeal would not be accepted past 4:30pm.

At 4:31pm, the following email was received from Mr. Nisbet:

**From:** Bear Nisbet [REDACTED]  
**Sent:** October 11, 2022 4:31 PM  
**To:** Champion, Erica AF:EX [REDACTED]  
**Subject:** Re: Appeal of SPCA decision to keep my dog and not return Her to my custody.

My name is Barry Nisbet and I'm emailing You for the purpose of disputing a decision made by the BC SPCA Chief Prevention and Enforcement Officer Marcie Moriarty who has denied my request to have my dog Tia returned to my custody. The file I'm appealing is # 348152. I reside at [REDACTED]. My contact information is as follows. [REDACTED] and email is [REDACTED]. My dog Tia was taken away on Sept 16th 2022. I deny the allegations made against my girlfriend Cheyanne Williams and Myself and refute alot of the allegations that others outside of the SPCA have stated and entered into evidence. I have done a decent job in CO parenting and raising Tia since she was 8 weeks old. I wasn't aware of alot that had been told to my girlfriend as far as suggested treatments and strongly suggested appointments because 2 of the staff members that initially started this files course in my opinion are embellished and done out of spite. But Important to know is that I did everything I was asked to do by Miss Moriarty but feel like we aren't being given another chance because we love our Dog Tia with all our hearts. To prevent another ailment I have had my home cleaned professionally and want to appeal Miss Moriartys decision denying Tia being returned. We all make mistakes and other barriers were in play aswell. We all make mistakes and being portrayed as bad owners of Tia I think at least we deserve one more chance to prove that we can look after Tia. Thank you for your time.  
Barry Nisbet.

First thing in the morning on October 12, 2022, BCFIRB staff attempted to phone Mr. Nisbet to inform him that as his appeal was received at 4:31am, it had been filed out of time. He did not answer the phone, and his voicemail had not been initialized.

At 9:48am on October 12, 2022, BCFIRB staff sent the following response to Mr. Nisbet:

Hello Mr. Nisbet,

Thank you for your email below. Unfortunately your appeal has been received out of time (received by our office at 4:31pm on October 11, 2022). As discussed and outlined by case management staff on the phone and by email, BCFIRB has no authority to extend timelines and the 4:30 pm deadline is firm.

Kind regards,

[Erica Champion](#) (she/her) | Assistant Case Manager  
[BC Farm Industry Review Board \(BCFIRB\)](#)

Mr. Nisbet sent the below email on October 13, 2022:

**From:** Bear Nisbet [REDACTED]  
**Sent:** October 12, 2022 10:00 PM  
**To:** Champion, Erica AF:EX [REDACTED]  
**Subject:** Re: The return of my dog Tia

Erica,

This is Barry Nisbet and I first of all want to express my disgust in the system that is basically taking my Tia away from me. You may have thought that calling me with only a few minutes left to remind me of the 430 pm deadline was being helpful. And my time stamp proves I did just as you instructed. Unfortunately that call cost me crucial minutes and now you're telling me that I'm losing my dog because your office didn't receive it until 431pm? I have no control over the electronic process and I'm suggesting to you now that there has to be something that can be done. I'm not willing to accept the decision made by your office. In my opinion your call is the reason your office didn't receive my appeal on time even though my sent files show a 430pm time stamp. I'm pleading to you to please accept the fact that if I didn't love and care deeply for Tia then why would I even go through all of this mental anguish and stress? I'm going to be contacting an attorney to appeal the decision if your office decides that Tia will not be returned to Me. My time stamp says 430pm yours says 431pm. Is that a good enough reason to tear a family apart and emotionally scar two people who have already been beaten down by this entire process and now forced to accept that we'll never see our baby Tia again? I have truly lost all faith in humanity and will never be the same again. And should the decision remain unchanged then I have to question if you people even possess any emotional capacity because I can barely fight back tears as I type out this letter knowing that I still have the task of informing my girlfriend that Tia's gone and we'll never see her again because of the speed of an electronic process and a phone call that you should NOT have made no matter of your intention. I apologize for being brutally honest but what would you do if you were in my position?

## Decision

Under the *PCAA*, a person may appeal a review decision of the BCSPCA to BCFIRB within four calendar days of the decision being received. BCFIRB's jurisdiction to hear an appeal is defined by this 4-day period. The *Interpretation Act* RSBC 1996, c. 238

defines “day” by reference to the office’s “regular business hours”. Further, there is no provision under the *PCAA* to extend the filing time for appeals.

The Society emailed its review decision to Ms. Williams and Mr. Nisbet at 4:08pm on October 7, 2022. Further, Mr. Nisbet was advised both in telephone conversations and by email that BCFIRB’s office closes at 4:30 pm and the Notice of Appeal would need to be received by 4:30pm on October 7, 2022 and there were no exceptions.

This is a very unfortunate situation Mr. Nisbet, and I am not without empathy or understanding for how you must feel. The timing is extremely regrettable, but BCFIRB has no discretion in this matter. As 4:30 pm is the deadline, legally it does not matter whether the Notice of Appeal was received one minute, one hour or one day late. As the Notice of Appeal was not received within the required statutory time period (before 4:30pm Tuesday, October 7, 2022), BCFIRB is unable to accept your appeal for filing. As such, your Notice of Appeal was filed out of time and BCFIRB has no discretion to extend the time for filing the appeal.

Yours truly,

A handwritten signature in blue ink, appearing to read "Kirsten Pedersen", with a long, sweeping flourish extending upwards and to the right.

Kirsten Pedersen  
Executive Director/Registrar